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Clifford Chance's International Regulatory Update is a weekly digest of significant (non-Coronavirus-related) regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

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Bulgaria and Croatia to become members of the Single Resolution Mechanism

The Single Resolution Board (SRB) has announced that Bulgaria and Croatia are to join the Single Resolution Mechanism (SRM).

As of 1 October 2020, the European Central Bank (ECB) will directly supervise the two countries' significant institutions, and the SRB will become the resolution authority for these and all cross-border groups. The SRB will also oversee resolution planning for less significant institutions.

The announcement follows decisions by the ECB to establish close cooperation with the Bulgarian National Bank and the Croatian National Bank, which were adopted in parallel with agreements on the inclusion of the Bulgarian lev and the Croatian kuna in the Exchange Rate Mechanism II.

Brexit: EU Commission updates preparedness notices on financial services

The EU Commission has published updated stakeholder preparedness notices relating to financial services, originally published during the Article 50 negotiations.

Updated notices, referred to as readiness notices, take into account the transition period and the EU-UK Withdrawal Agreement and seek to highlight consequences for public administrations, businesses and citizens as of 1 January 2021, regardless of the outcome of the negotiations on the future UK-EU relationship.

Recently published notices on financial services cover:

- post-trade financial services;
- institutions for occupational retirement provision;
- investment services (markets in financial instruments);
- insurance and re-insurance; and
- statutory audits.

EMIR: EU Commission adopts draft delegated acts on tiering, comparable compliance and fees

The EU Commission has adopted three draft delegated regulations under the European Market Infrastructure Regulation (EMIR) relating to fees, tiering and comparable compliance for third country central counterparties (CCPs).

In May 2019 the European Securities and Markets Authority (ESMA) issued three consultation papers on the draft acts following a request for technical advice from the Commission.

The draft delegated acts:

- lay down the types of fees to be charged to third country CCPs;
- further specify the criteria that ESMA should take into account to determine whether a third-country CCP is systemically important or likely to become systemically important for the financial stability of the EU or one or more of its Member States; and
- specify the minimum elements to be assessed and the conditions ESMA should take into account when assessing whether a Tier 2 CCP can satisfy compliance with EMIR by complying with its domestic law.

The delegated regulations will now be forwarded to the EU Council and the Parliament for scrutiny.

Prospectus Regulation: ESMA publishes guidelines on disclosure requirements

ESMA has published a final report setting out guidelines on disclosure requirements under the Prospectus Regulation.

The guidelines are intended to ensure that market participants have a uniform understanding of the relevant disclosure requirements and assist national competent authorities when they assess completeness, comprehensibility and consistency of information in prospectuses. Topics covered include:

- pro-forma information;
- interim and historical financial information;
- profit forecasts and estimates;
- working capital statements;
- operating and financial review;
- options agreements;
- collective investment undertakings; and
- capitalisation and indebtedness.

Alongside the guidelines, ESMA has published feedback on the responses received to its July 2019 consultation.

The guidelines apply from 15 September 2020.

MiFID: ESMA issues opinion on pre-trade transparency waivers for equity and non-equity instruments

ESMA has issued an opinion setting out guidance on pre-trade transparency waivers for equity and non-equity instruments under MiFIR.

Articles 3 and 8 of MiFIR set out pre-trade transparency requirements for market operators and investment firms operating a trading venue for equity and non-equity instruments in order to inform market participants of trading opportunities and prices and to ensure that an efficient price discovery process is not impaired by the fragmentation of liquidity. MiFIR recognises that there may be circumstances where exemptions from the pre-trade transparency obligations should be provided and allows national competent authorities (NCAs) to waive the obligation.

ESMA's guidance provides stakeholders with information on ESMA's assessment of features frequently encountered in the context of issuing opinions on waivers over the last three years and aims to contribute to the consistent application of waivers across the EU. ESMA plans to update the document if further frequent issues in the context of assessing waiver notifications arise.

MiFID2/MiFIR Review: ESMA publishes reports on the transparency regime

ESMA has published a final report on the transparency regime for equity instruments and a final report on the pre-trade transparency obligations applicable to systematic internalisers (SIs) in non-equity instruments.

The report on equity instruments sets out proposals for targeted amendments relating to the pre-trade transparency applicable to trading venues, SIs, the double volume cap (DVC) mechanism and the share trading obligation (STO), including:

- restricting the use of the reference price waiver to larger orders;
- increasing the minimum quoting obligations and a revised methodology for determining the standard market sizes relevant for the quoting by SIs;

- simplifying the DVC regime and transform the mechanism into a single volume cap with the deletion of the trading venue threshold of 4%, and improving transparency by lowering the EU level threshold; and
- clarifying the scope of the STO specifically in relation to third-country shares.

In the report on SIs in non-equity instruments, ESMA proposes to:

- allow SIs to withdraw quotes at any time (and not only under 'exceptional market conditions');
- simplify the requirements applicable to quotes in liquid non-equity instruments;
- extend the requirements for publishing quotes currently applicable to equity instruments to non-equity instruments; and
- simplify the requirements applicable to quotes in illiquid non-equity instruments.

A new timeline for the delivery of some of the remaining reports in the light of current developments concerning COVID-19 has been published alongside the reports.

The reports have been submitted to the EU Commission.

ESMA publishes results of third CCP stress test

ESMA has published the results of its third stress test exercise regarding CCPs in the EU. The stress test assessed the resilience of EU CCPs to adverse market developments covering credit and liquidity risk, and concentration risk for the first time.

The exercise found that EU CCPs are overall resilient under the implemented common shocks and multiple defaults scenarios. While no systemic risk was identified in the liquidity and credit stress tests, the new concentration risk test highlighted a need for EU CCPs to accurately account for liquidation cost within their risk framework.

ESMA publishes updated opinion on ancillary activity calculations

ESMA has published an updated opinion on ancillary market calculations. The opinion provides the estimation of the market size of commodity derivatives and emission allowances for 2019.

Article 2(3) of Delegated Regulation (EU) 2017/592 lays down the rules for calculating the overall market trading activity, necessary for the establishment of the size of trading activity per market participant which ultimately determines whether an activity is ancillary and whether a market participant falls within scope of MiFID2.

To ensure the correct application of Article 2(3), national competent authorities and market participants have asked ESMA to provide guidance for the determination of the market size figures. ESMA's guidance aims to promote consistent supervisory practices and ensure a uniform approach throughout the EU.

EU Parliament adopts resolution on money laundering and terrorist financing

The EU Parliament has adopted a resolution on a comprehensive EU policy on preventing money laundering and terrorist financing, welcoming the Commission's action plan on effective anti-money laundering and combatting terrorism financing (AML-CTF) measures and highlighting the most pressing changes needed to achieve an efficient EU framework, proposing tools including interconnected registers of beneficial owners, a preventive blacklisting policy and effective sanctions.

To combat the poor implementation of AML/CTF rules in Member States, the EU Parliament has called for a zero-tolerance approach and infringement procedures against those who lag behind in transposing the rules into national law.

MEPs want the Commission to increase effective use of data by:

- setting up interconnected registers in the EU to address the lack of quality data to identify ultimate beneficial owners;
- widening the scope of supervised entities to include new and disruptive market sectors such as crypto-assets; and
- immediately blacklisting non-cooperative jurisdictions and high-risk third countries, while creating clear benchmarks and cooperating with those undertaking reforms.

MEPs have called for the mutual recognition of freezing and confiscation orders to be enforced, making criminal assets easier to recover across borders and enabling swift cross-border cooperation. They also want the ECB to be able to independently withdraw the licences of any banks operating in the euro area that breach AML/CTF obligations.

The EU Parliament has also highlighted the contribution of international investigative journalism and whistle-blowers in exposing possible crimes and has called on authorities to identify those who instigated the assassination of Daphne Caruana Galizia and to investigate pending serious money laundering allegations.

CPMI reports on enhancing cross-border payments

The Committee on Payments and Market Infrastructure (CPMI) has published a report which marks the second of a three-stage process, coordinated by the Financial Stability Board (FSB) at the request of the G20, to develop a roadmap to enhance cross-border payments.

The report sets out 19 building blocks for a global roadmap and details the necessary elements to address the challenges of high costs, low speed, limited access and insufficient transparency of cross-border payments, highlighted by the first-stage FSB report published in April 2020. The CPMI report was delivered to G20 Finance Ministers and Central Bank Governors ahead of their virtual meeting on 18 July 2020. The FSB will publish the roadmap, as the third and final stage of this deliverable, in October 2020.

FSB Chair Randal K. Quarles has welcomed the report, stating that it provides elements that can be used flexibly within a roadmap, combining enhancements to the current cross-border arrangements and infrastructures

with the exploration of more ambitious yet more uncertain longer-term possibilities.

AMLD5: draft Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations laid for sifting

HM Government has laid the draft Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 before Parliament for sifting.

The draft regulations would amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) to implement amendments made by Directive (EU) 2018/843 (AMLD5).

The main changes are made in order to transpose provisions introduced by AMLD5 concerning the UK's register of express trusts. These include an expansion of the register's scope and a new requirement that information on the register is made available in certain circumstances to those with a legitimate interest. Further changes relate to the following topics:

- correspondent banking;
- reporting of discrepancies in beneficial ownership information;
- customer due diligence on publicly listed companies;
- the use of confidential information;
- registration deadlines for some firms;
- directions to cryptoasset businesses; and
- deficiencies that would otherwise arise at the end of the Transition Period.

Also published is a summary of responses received to the Government's January 2020 consultation paper, entitled 'Fifth Money Laundering Directive and Trust Registration Service'. The summary sets out the Government's next steps and response to comments received.

Brexit: FCA confirms relevance of MoUs with ESMA and EU securities regulators

The Financial Conduct Authority (FCA), ESMA and EU national securities regulators have confirmed that the Memoranda of Understanding (MoUs) agreed in February 2019 remain relevant.

The FCA has confirmed that the MoUs, which cover cooperation and the exchange of information and were to take effect in the event that the UK left the EU without a withdrawal agreement, are still appropriate to ensure continued good cooperation and exchange of information.

The MoU with ESMA covers the exchange of information in relation to the supervision of credit rating agencies and trade repositories. The MoU with the EU/EEA NCAs covers supervisory cooperation, enforcement and information exchange. It will allow the FCA and NCAs to share information on, amongst other things, market surveillance, investment services and asset management activities and will allow certain activities, such as fund manager outsourcing and delegation, to continue to be carried out by UK-based entities on behalf of counterparties based in the EEA.

The MoUs will now come into effect at the end of the transition period, which is set to expire on 21 December 2020.

Brexit: EPC publishes additional data elements for SEPA transactions with the UK post-transition period

The European Payments Council (EPC) has published a press release setting out measures payment service providers (PSPs) should implement in preparation for the end of the transition period.

To ensure a continued smooth processing of cross-border SEPA payments after 31 December 2020, the EPC states that all SEPA transactions to be executed or settled as of 1 January 2021 involving a UK-based SEPA payment scheme participant must contain certain address details and the relevant bank BIC code when a certain explicit request has been made. The details required are specified for the following situations:

- for SCT and SEPA Instant Credit Transfer (SCT Inst) instructions from the originator; and
- for SDD Core and SDD B2B collection files from the creditor.

A lack of these details may lead to rejected transactions or other issues from the scheme participant receiving the payment message.

The EPC therefore recommends each SEPA payment scheme participant identify and inform its customers with incoming and outgoing cross-border SEPA transactions involving both a UK and an EEA payment account of the need to provide the additional SEPA transaction data as from 1 January 2021 (as execution or settlement date).

Bank of England Governor discusses need to transition from LIBOR by end of 2021

Andrew Bailey, Governor of the Bank of England (BoE), has given a speech on the need to have plans in place and to take action to transition from LIBOR to alternative interest rate benchmarks by the end of 2021.

Mr. Bailey stated that the initial impact of COVID-19 on the financial markets in March had reinforced the importance of removing the financial system's dependence on LIBOR in a timely way. He emphasised that although some of the phasing of key milestones in the UK were changed as a result of COVID-19, necessary progress still needs to be made over the next eighteen months.

In particular, Mr. Bailey discussed:

- adapting to the impact of COVID-19;
- the progress made in sterling markets; and
- the challenge of legacy business.

Mr. Bailey emphasised that those who can transition away from LIBOR should do so on terms that they themselves agree with their counterparties. Mr. Bailey also stated that market participants need to take action now to ensure new issuance moves to alternative rates and that plans are in place to deal with legacy exposures.

According to Mr. Bailey, communication for those exposed to LIBOR remains a challenge. In September the Working Group on Sterling Risk-Free Reference Rates intends to begin a further programme of public

communications to help those with LIBOR linked exposures navigate onto more robust alternatives.

CRD5: Treasury consults on updating UK prudential regime

HM Treasury (HMT) has launched a consultation on its approach to transposing Directive (EU) 2019/878 (CRD5), which entered into force on 27 June 2019 and must be transposed by 28 December 2020.

HMT's planned implementation of CRD5 involves providing the Prudential Regulation Authority (PRA) with new or updated powers to implement CRD5. HMT also plans to ensure that the PRA can update its rulebook as needed.

The consultation seeks comment on the areas requiring legislation, which include the following:

- the intention to exempt investment institutions prudentially regulated by the FCA from the scope of CRD5, given the planned introduction of the Investment Firms Prudential Regime (IFPR) by summer 2021;
- various updates to the capital buffers that the PRA can require of institutions, to allow the Financial Policy Committee (FPC) and the PRA to maintain their current level of macro-prudential flexibility;
- extending the PRA's powers for consolidated supervision to holding companies and creating a new approval regime for Financial Holding Companies (FHCs) and Mixed Financial Holding Companies (MFHCs). In addition, granting the PRA an express power to remove members of the management body of institutions and holding companies; and
- amendments to the list of entities exempted from CRD5.

The areas of CRD5 which are to be implemented in PRA rules are not included in the consultation.

Comments on the consultation are due by 19 August 2020.

PRA consults on SM&CR forms update

The PRA has launched a consultation (CP7/20) on its proposals to make minor amendments to the PRA Rulebook, Notifications Form and Senior Manager & Certification Regime (SM&CR) Form L.

The PRA proposes to:

- amend the Notification Form to reflect the new FCA address and logo;
- make minor consequential amendments to the Notification Form to delete an incorrect reference to the PRA as a limited company, update references to the PRA Rulebook, and update the General Data Protection Regulation (GDPR) notification; and
- update SM&CR Form L to reinstate question 3.05, which requests firms making a notification to provide details of any disciplinary action taken. This question was erroneously deleted when the Form was updated as part of the extension of SM&CR to insurers in December 2018.

Comments are due by 13 October 2020.

SRD2: Companies (Shareholders' Rights to Voting Confirmations) Regulations 2020 made

The Companies (Shareholders' Rights to Voting Confirmations) Regulations 2020 (SI 2020/717) have been made and laid before Parliament.

The regulations implement certain provisions of Article 3c of Chapter Ia of Directive (EU) 2017/828, which amended Directive 2007/36/EC on shareholder engagements and rights (Shareholders' Rights Directive).

Chapter Ia relates to the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights. Many of its requirements are already implemented in UK law. The regulations implement those parts of Article 3c not already part of the UK framework, namely:

- requiring an electronic confirmation to be sent to the shareholder on receipt of an electronic vote; and
- providing information which enables a shareholder to confirm that their vote taken by a poll in a general meeting has been validly recorded and counted by the company to be provided on request by the shareholder.

The regulations come into force on 3 September 2020.

TheCityUK publishes report on supporting UK economic recovery and recapitalising businesses post COVID-19

TheCityUK Recapitalisation Group (RCG) has published a report on supporting economic recovery and recapitalising businesses post COVID-19, which highlights the number of jobs and small and medium-sized businesses (SMEs) at risk if urgent action is not taken to tackle the projected GBP 35 billion of unsustainable debt that could result from COVID-19 loans. The report sets out a series of options for converting, restructuring and repaying this debt to help SMEs get back on their feet, save jobs, protect taxpayer money, and help power Britain's economic recovery and future growth.

Central to the options presented in the report is the founding of a new government-backed entity, a 'UK Recovery Corporation', which would both issue and hold, and oversee and manage, the unsustainable debt that is already government-guaranteed, in order to support funding on more manageable terms for businesses and provide a vehicle in which the private sector could invest in over time. Through the UK Recovery Corporation, viable SMEs would be offered the opportunity to convert their loans into new products allowing them to manage their debt in a more sustainable way and without being put into default. Depending on the size of their debt, they could either access a 'Business Repayment Plan (BRP)' to convert unmanageable loans into means-tested tax liabilities, or for larger debts, use 'Business Recovery Capital (BRC)' to convert crisis loans into preference shares or long-term subordinated debt.

Also among the options presented in the report is the creation of a new growth capital fund, or the scaling up of an existing fund, to provide businesses with growth capital to help power business recovery across the country.

The report warns that some sectors may face difficulty as early as autumn this year and that taking action now is vital to help businesses get back onto a stable footing.

A number of Clifford Chance partners participated in the Technical Working Group supporting the report.

CSSF issues FAQs on Circular 02/77 on investor protection in case of NAV calculation errors and investment breaches by UCIs

The Luxembourg supervisory authority of the financial sector (CSSF) has published a series of frequently asked questions (FAQs) in relation to its Circular 02/77 concerning the protection of investors in case of net asset value (NAV) calculation errors and correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment (UCIs).

The FAQs apply to UCITS and Part II UCIs subject to the Luxembourg law of 17 December 2010 (as amended) on UCIs, but also outline the principles to be applied by SIFs subject to the Luxembourg law of 13 February 2007 (as amended) on specialised investment funds. In this respect, the FAQs confirm in particular the CSSF's regulatory practice according to which SIFs may either opt for the application of Circular 02/77 or set other specific internal rules applicable in the context of NAV calculation errors and active investment breaches.

The FAQs are divided into three main sections analysing:

- the general scope of application of Circular 02/77, i.e. material NAV calculation errors and active investment breaches by UCIs;
- the organisational requirements, including appropriate policies and related processes and procedures to be established and applied by UCIs in the treatment of NAV calculation errors and investment breaches, as well the selection of the correction method to be used by UCIs; and
- some specific issues regarding the tolerance thresholds provided for by Circular 02/77 in relation to NAV calculation errors (e.g. 0,50% of the NAV for bond funds, 1% of the NAV for equity and other funds, etc.).

Decision trees are also appended to the FAQs with a mapping out and summary of, amongst others, the relevant actions to be taken and procedure to be followed by UCIs depending on the type, specifics and financial impact of the relevant NAV calculation error or investment breach.

CSSF issues updated circular on supervisory reporting requirements applicable to credit institutions

The CSSF has issued circular 20/745 dated 6 July 2020 amending CSSF Circular 14/593 on supervisory reporting requirements applicable to credit institutions (as amended). The new circular updates the annex of CSSF Circular 14/593 (FINREP tables to be submitted from June 2020), following the publication of Regulation (EU) 2020/605 of the European Central Bank (ECB) of 9 April 2020 amending Regulation (EU) 2015/534 as amended by Regulation (EU) No 2017/1538 of the ECB of 25 August 2017 concerning the reporting of prudential financial information.

The circular entered in force on 6 July 2020.

Luxembourg law implementing Article 31 of AMLD4 and creating central register of fiduciary arrangements published

The Law of 10 July 2020 implementing Article 31 of AMLD4 and creating a central register of fiduciary arrangements has been published in the Luxembourg official journal (Mémorial A).

The Law introduces a central register of fiduciary arrangements (registre des fiducies et des trusts) and requires, amongst others, all trustees and fiduciaries (fiduciaires) to obtain, hold and file with the register the relevant information on the beneficial owner(s) for any express trust (trust exprès) administered in Luxembourg and any fiducie for which they act as trustee or fiduciary.

The register will be set up and administered by the Administration de l'Enregistrement et des Domaines (AED) and will be made available to the Luxembourg public authorities, supervisory authorities and self-regulatory bodies in their work related to anti-money laundering and counter terrorist financing (AML/CTF) and professionals falling within the scope of the law of 12 November 2004 on the combat against money laundering and terrorist financing (as amended) (AML/CTF Law) in the context of their customer due diligence obligations. Furthermore, access to certain information may be granted by AED, on a case by case basis, to any person demonstrating a legitimate interest with respect to AML/CTF. The AED is also empowered to take the necessary measures for the interconnection with analogous registers set up in accordance with Article 31 of AMLD4 in other EU Member States.

While the Luxembourg financial sector supervisory authority (CSSF), the Luxembourg insurance supervisory authority (CAA) and the self-regulatory bodies are responsible for monitoring compliance with the Law by persons under their respective AML/CTF supervision, the AED is responsible for the supervision of professionals, trustees and fiduciaries (fiduciaires) established or residing in the Grand Duchy of Luxembourg and which are not subject to the supervisory power of another authority or a self-regulatory body.

In this context, the Law provides these authorities with extensive powers, including to access to all relevant documents with respect to fiducies and express trusts (trust exprès), to request information from other control authorities and to impose injunctions, administrative sanctions and other administrative measures (e.g. warning, reprimand, public declaration). The Law also foresees criminal law sanctions in certain cases.

The Law entered into force on 17 July 2020.

Luxembourg law introducing professional payment guarantee published

The Law of 10 July 2020 on professional payment guarantees has been published in Mémorial A. The Law creates a new type of guarantee under Luxembourg law, in addition to existing instruments such as accessory guarantees (cautionnements) and autonomous guarantees (garanties autonomes). The new framework is intended to provide parties with greater contractual freedom while preserving legal certainty and protecting from re-characterisation. Although the parliamentary debate made reference to the COVID-19 crisis and the usefulness of this new instrument in the context of the public measures in support of the economy, the Law is not limited in time

or application to such crisis measures, but is now part of general Luxembourg law.

The Law entered into force on 17 July 2020.

Financial Stability Committee issues communication on weight of risks applicable to banks with respect to certain loans secured by real estate

The Financial Stability Committee has issued a communication concerning the weight of risks applicable to banks with respect to certain loans secured by real estate. The Committee has recommended that the weights of risk for exposures secured by commercial real estate used by the borrower to conduct own economic activity and not generating revenue in the form of rent or profit from the sale thereof be reduced from the level of 100% to 50%. According to the Committee the reduction is to help strengthen the own funds of banks and counteract the reduction in lending.

The Committee notes that it is advisable that the funds released as a result of the reduction of the risk weights be designated for the provision of credit to the economy and to cover possible losses suffered by banks in the upcoming quarters.

Ministry of Finance publishes draft Act Amending the Act on Bonds and Certain Other Acts

The Ministry of Finance has published a draft Act Amending the Act on Bonds and Certain Other Acts. The purpose of the amendment is primarily to specify the rules governing the issuance of capital instruments (AT1) qualified as regulatory capital of banks and brokerage houses and own funds of insurance and reinsurance undertakings, including the issuance of capital bonds as a new category of bonds by those financial market entities. Pursuant to the draft, capital bonds have been equipped with a mechanism for their conditional conversion into shares or write down in the event of the occurrence of a trigger event specified in the terms and conditions of issue, according to the rules set out in the Capital Requirements Regulation (CRR) and in Commission Delegated Regulation (UE) 2015/35.

Amongst other things, the Act also sets out rules regarding subordinated loans meeting the requirements laid down in Article 52 of the CRR.

The draft has been published for public consultation.

Polish Financial Supervision Authority consults on draft standpoint on issuance of and trading in cryptoassets

The Polish Financial Supervision Authority (KNF) has sent organisations representing financial market entities a draft standpoint on the issuance of and trading in cryptoassets, which is intended to ensure a uniform approach to the regulatory issues affecting entities planning to issue and trade in cryptoassets, for consultation.

The draft standpoint contains a discussion of selected legal aspects of the problems associated with the issuance of and trading in tokens on the basis of the most typical cryptoassets.

The consultation ends on 30 July 2020.

Polish Financial Supervision Authority extends deadline for complying with Recommendation S

The KNF has amended its resolution of 3 December 2019 to issue the amended Recommendation S on best practices with regard to management of credit exposures secured by mortgages, by extending the deadline by which commercial banks and branches of credit institutions must comply with it to 30 June 2021.

Bank of Spain circular on advertising of banking products and services published in Official Gazette

The Bank of Spain's Circular 4/2020 of 26 June on advertising of banking products and services has been published in the Spanish Official Gazette. The circular updates the regulatory framework applicable to advertising of banking products and services (including a specific regime for advertising on digital media and social networks) to strengthen the rules of conduct that must be complied with by supervised entities in their interactions with clients. One of the main pillars of the circular is to establish a greater degree of development and systematisation of the general principles and criteria on the content and format that shall be met, taking into account the characteristics of each product or service advertised and the means through which the advertising is carried out. Additionally, in order to strengthen legal security, the circular extends the scope of application to lenders and real estate credit intermediaries.

The circular enters into force on 15 October 2020, except for (i) Rule 7, which enters into force six months after the publication by the Bank of Spain of the technical specifications provided for in the second final provision and (ii) the provisions of the single additional provision which enters into force on the day following its publication in the Spanish Official Gazette.

CSRC and CBIRC revise rules on securities investment fund custody business

The China Securities Regulatory Commission (CSRC) and the China Banking and Insurance Regulatory Commission (CBIRC) have jointly issued the revised 'Administrative Measures on Custody Business for Securities Investment Funds' and abolished the previous version of the measures issued in 2013 as well as the 'Interim Rules on Securities Investment Fund Custody Business for Non-banking Financial Institutions'.

Amongst other things, under the measures:

- PRC branches of overseas banks may apply for a licence to act as a custodian of securities investment funds and the eligibility of each branch will be assessed at its overseas head office level;
- among other eligibility conditions for applying for the licence by a branch, the securities regulatory authority of the country/region where its head office is located shall have entered into a memorandum of understanding on the cooperation of securities supervision with CSRC (or regulators recognised by CSRC) and have maintained an effective cooperation with CSRC (or regulators recognised by CSRC);
- civil liabilities of a branch shall be assumed by its head office and the obligations to be performed by the head office shall be specified in the

transaction documents such as fund contracts, offering documents and custody agreements;

- a liquidity support mechanism relating to the custody business to be carried out by a branch will need to be established by its head office; and
- commercial banks and other non-banking financial institutions that wish to apply for the licence are subject to the same rules.

HKMA consults on enhancing regulation and supervision of trust business

The Hong Kong Monetary Authority (HKMA) has launched a public consultation on its proposal to enhance the regulation and supervision of trust business in Hong Kong. The HKMA proposes to introduce a Code of Practice for Trust Business to enhance the protection of client assets held on trust and better align with international standards and practices.

The proposed Code sets out the general principles and practical standards to govern the business conduct of authorised institutions (AIs) that conduct trust business in Hong Kong. The HKMA has clarified that the proposed Code will not have the force of law and trustees should observe applicable statutory and other regulatory requirements as relevant to their trust and other business. Locally incorporated AIs with subsidiaries that conduct trust business in Hong Kong (AI subsidiaries) will also be required to ensure that the business conduct, practices and controls of such subsidiaries are in line with the proposed Code. Any other trustees that conduct trust business in Hong Kong will be encouraged to adopt the proposed Code to the extent applicable, for better protection of client assets. The HKMA invites comments on the proposed implementation arrangements, including the proposal to publish a list of trust companies which subscribe to the proposed Code.

Apart from the proposed Code, the HKMA is also seeking views on the competency and professional development of trust practitioners.

Comments on the consultation are due by 9 October 2020.

HKMA issues circular regarding revised BCBS credit valuation adjustment risk framework

The HKMA has issued a circular to all locally incorporated authorised institutions noting the Basel Committee on Banking Supervision's (BCBS's) recent targeted revisions to the credit valuation adjustment (CVA) risk framework, which replaces an earlier version of the framework originally published as part of the Basel III reform package in December 2017. The key targeted revisions to the CVA risk framework include:

- adjustments to certain risk weights in both the standardised approach and the basic approach to align with the revised market risk framework;
- introduction of new index buckets and revision of the aggregation formula in the standardised approach also to align with the revised market risk framework;
- alternations to the scope of the CVA risk framework by excluding some securities financing transactions where the CVA risk stemming from such positions is not material; and

- revision of the overall calibration of the CVA risk framework by reducing the aggregate multiplier in the standardised approach and introducing a similar scalar for the basic approach.

In its circular dated 30 March 2020, the HKMA indicated that it would align its local implementation of the new CVA risk framework with the latest BCBS timetable, i.e. 1 January 2023, for reporting purposes. The HKMA has now clarified that the local implementation of the actual capital requirements based on the new framework will be no earlier than 1 January 2023 and its timing will take into account the implementation progress observed in major jurisdictions. It also expects authorised institutions to closely follow the BCBS' CVA risk framework for the implementation of its local standards. Further, the HKMA has indicated that it plans to issue a consultation paper later in 2020.

RECENT CLIFFORD CHANCE BRIEFINGS

Transitioning from LIBOR – implications for Islamic finance

The discontinuation of LIBOR as an interest rate benchmark raises a number of issues for Islamic finance transactions.

This briefing discusses the challenges ahead and outlines some of the potential solutions.

https://www.cliffordchance.com/briefings/2020/07/transitioning-from-libor--implications-for-islamic-finance.html

New obligations for traded companies to provide confirmation of voting to shareholders

New regulations, which come into force on 3 September 2020, will require traded companies to provide a confirmation of receipt of votes cast on a poll by electronic means. In addition, shareholders will have the right to request information from the company to help them determine that, where they have cast their vote on a resolution by way of poll at a general meeting, their vote has been validly recorded and counted.

This briefing discusses the new regulations.

https://www.cliffordchance.com/briefings/2020/07/new-obligations-for-traded-companies-to-provide-confirmation-of-.html

New law introducing a professional payment guarantee under Luxembourg law

The Law on professional payment guarantees dated 10 July 2020 (the 'PPG Law') creates a new type of guarantee under Luxembourg law, in addition to existing instruments, such as accessory guarantees (cautionnements) and autonomous guarantees (guaranties autonomes). The new framework is intended to provide the parties with greater contractual freedom, while preserving legal certainty and protecting against re-characterisation. Parties must expressly agree that their guarantee instrument is subject to the PPG Law for the regime to apply.

This briefing discusses the key features of the new instrument.

https://www.cliffordchance.com/briefings/2020/07/new-law-introducing-a-professional-payment-guarantee-under-luxem.html

Newsflash briefing for private funds managers – ERISA vs ESG

The Department of Labor has proposed a rule that will inhibit US private employer retirement plan investment in funds that promote the 'non-pecuniary' benefits of the investment. Although the DOL did not precisely define what investments or funds would be the subject of this rule, the DOL referenced 'socially responsible investing, sustainable and responsible investing, environmental, social and corporate governance investing, impact investing, and economically targeted investing.'

This briefing discusses the proposed rule.

https://www.cliffordchance.com/briefings/2020/07/Newsflash-Briefing-for-Private-Funds-Managers-ERISA-vs-ESG.html